

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35603

STATE OF IDAHO,)	2009 Unpublished Opinion No. 397
)	
Plaintiff-Respondent,)	Filed: March 27, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
HEATHER ROSEMARIE LUSBY,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael R. McLaughlin, District Judge.

Order revoking probation and requiring execution of unified four-year sentence with one-year determinate term for grand theft, affirmed.

Greg Silvey, Kuna, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge, GUTIERREZ, Judge
and GRATTON, Judge

PER CURIAM

Heather Rosemarie Lusby was convicted of grand theft, Idaho Code §§ 18-2403(1), -2407(1)(b). The district court imposed a unified five-year sentence with one year determinate, suspended the sentence and placed Lusby on probation. Lusby admitted to violating her probation and the district court revoked probation and ordered execution of the underlying sentence, but after a period of retained jurisdiction, suspended the sentence and again placed Lusby on probation. Subsequently, Lusby again admitted to violating several terms of the probation. The district court revoked probation and ordered execution of a reduced unified four-year sentence with one year determinate, giving Lusby credit for 418 days served. Lusby appeals, contending that the district court abused its discretion in revoking probation.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation a court must examine whether the probation is (1) achieving the goal of rehabilitation and (2) consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 325, 834 P.2d at 327.

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion either in revoking probation or in ordering execution of Lusby's modified sentence. Therefore, the order revoking probation and directing execution of Lusby's previously suspended sentence is affirmed.